

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

<b>TPMC-ENERGYSOLUTIONS</b>	)	
<b>ENVIRONMENTAL SERVICES 2008, LLC,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>No. 15-1566C</b>
	)	<b>(Judge Horn)</b>
<b>v.</b>	)	
	)	
<b>UNITED STATES,</b>	)	
	)	
<b>Defendant.</b>	)	

**JOINT PRELIMINARY STATUS REPORT**

Pursuant to Rule 16 and Appendix A, paragraph III, 4, of the Rules of the United States Court of Federal Claims (RCFC), the parties respectfully file the following joint preliminary status report:

(a) Does the Court have jurisdiction over the action?

The parties know of no reason to question the jurisdiction of the court to entertain this action.

(b) Should this case be consolidated with any other case?

The case should not be consolidated with any other case.

(c) Should trial of liability and damages be bifurcated?

The parties are not aware of any reason why liability and damages should be tried separately.

(d) Should further proceedings in this case be deferred pending consideration of another case before this court or any other tribunal?

Further proceedings in this action should not be delayed pending consideration of another case before this Court or another tribunal.

- (e) Will a remand or suspension be sought?

Neither party intends to request remand or suspension.

- (f) Will additional parties be joined?

No additional parties should be joined.

- (g) Does either party intend to file a motion pursuant to RCFC 12(b), 12(c), or 56?

After the parties have conducted some or all discovery, the parties may file dispositive motions in accordance with any scheduling order by the Court.

- (h) What are the relevant factual and legal issues?

The following are issues that, at this time, identify the dispute between the parties. Although the issues identified by each of the parties are similar, the differing views of the parties regarding some of the issues and facts have led the parties to suggest separate statements of relevant issues. As discovery progresses, new information may become available, or new issues may become apparent, that will lead the parties to a unified set of issues, or that may cause the parties to need to supplement or amend this listing.

- (1) Plaintiff identifies the following relevant factual and legal issues:

The work to be performed by the Plaintiff under the contract was to be in accordance with a Decommissioning Plan (DP) which was incorporated into the contract. When the Plaintiff began the work it alleges that it was discovered that the site was not in accordance with the DP. The Plaintiff contends that it was forced to completely alter its work plan and that it took much longer to perform the work than originally planned. The Plaintiff alleges that: the specification were defective; there were differing site conditions; and, that the Defendant was aware of the defective nature of the specifications. The Plaintiff also alleges that the Defendant hindered and

delayed the Plaintiff's performance, therefore increased the time to perform and the Plaintiff's costs to perform.

(2) Defendant views the relevant issues as follows:

a. Whether plaintiff can meet its burden of proving that it is entitled to additional compensation for remediation and decommissioning of a low level radioactive burial site located in the Beltsville Agricultural Research Center in Beltsville, Maryland.

b. Whether plaintiff can prove that Contract No. W52p1J-11\_D-0001 (the contract) contained defective specifications, as alleged.

c. Whether plaintiff can prove its claims of differing site conditions and superior knowledge, as alleged.

d. Whether plaintiff can prove the Government constructively change the contract, as alleged.

e. Whether plaintiff can prove that the Government failed to cooperate and hindered plaintiff's performance, as alleged.

(i) What is the likelihood of settlement? Is alternative dispute resolution contemplated?

The parties are open to the possibility of settlement, and the use of alternative dispute resolution (ADR) procedures, but, at this time, the parties are not in a position to characterize the likelihood of settlement.

(j) Do the parties anticipate proceeding to trial?

If the parties are unable to resolve the matter through dispositive motions or through settlement the parties will proceed to trial. The parties believe that an expedited trial pursuant to paragraph 4(j) of Appendix A is not warranted.

Joint Proposed Schedule

The parties propose the following schedule for further proceedings:

Initial disclosures: June 27, 2016

End of non-expert discovery. All non-expert discovery requests shall be served so that, pursuant to the Rules of the Court, the required responses shall be due no later than November 1, 2016.

Expert Disclosures (if necessary), pursuant to RCFC 25(a)(2)(C): January 15, 2017

Final date for filing dispositive motions: March 15, 2017

(k) Are there special issues regarding electronic case management needs?

The parties are not aware of any special issues regarding electronic case management needs.

(l) Is there any other information of which the Court should be aware at this time?

The parties are unaware of any other matters which should be brought to the Court's attention at this time.

Respectfully submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General

ROBERT E. KIRSCHMAN, JR.  
Director

s/ Deborah A. Bynum  
DEBORAH A. BYNUM  
Assistant Director

s/ James Hatcher Graham  
JAMES HATCHER GRAHAM  
J. Hatcher Graham, P.C.  
303 Pheasant Ridge  
Warner Robbins, GA 31088  
Tel: (478) 953-5606  
Fax: (478) 953-0272

s/ Joseph A. Pixey  
JOSEPH A. PIXLEY  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 480  
Ben Franklin Station  
Washington, DC 20044  
Tel: (202) 307-0843  
Fax: (202) 305-7643

Attorney for Plaintiff,

Attorneys for Defendant

May 16, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 16<sup>th</sup> day of May, 2016, a copy of the foregoing “JOINT PRELIMINARY STATUS REPORT” was filed electronically. I understand that notice of this filing will be sent to all parties by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system.

s/ Joseph A. Pixley

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Joseph A. Pixley